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Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM 1939

NO. [redacted] 121

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTHWEST STEEL ROLLING MILLS, INC.,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

MOTION FOR ADVANCEMENT OF CAUSE FOR ORAL ARGUMENT TO BE HEARD CONTEMPORANEOUSLY WITH ARGUMENT ON CAUSE NO. 584

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In the Supreme Court of the United States

OCTOBER TERM 1939

NO. 1063

GUY T. HELVERING, Commissioner of Internal Revenue,

Petitioner,

vs.

NORTHWEST STEEL ROLLING MILLS, INC.,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

In response to the petition for writ of certiorari, Northwest Steel Rolling Mills, Inc. admits those statements contained in the petition under the caption "Opinions Below," and "Jurisdiction," and, before referring to other portions of the petition, makes the following motion:

MOTION FOR ADVANCEMENT OF CAUSE ON THE CALENDAR AND FOR ARGUMENT OF CRANE-JOHNSON AND NORTHWEST STEEL ROLLING MILLS CASES CONTEMPORANEOUSLY.

Pursuant to Rule 20 (Subdivisions 3 and 8), respondent through its counsel respectfully moves this Honorable Court for an order advancing the above entitled cause, No. 1063, on the calendar for argu-

ment so that such cause may be argued contemporaneously with Cause No. 584 (*Crane-Johnson Co. v. Commissioner of Internal Revenue*).

Respondent's counsel are authorized to state that the Solicitor General joins in the above request.

The grounds for this request are that the same sections of the Revenue Act of 1936 are involved in both cases (Sections 14 and 26, Revenue Act of 1936) and the taxpayer in each case contends that by virtue of the charter of a corporation, such corporation is entitled to a credit under Section 26 in determining undistributed profits tax, it being the contention that the charter of the corporation is a written contract within the meaning of Section 26 (c) (1). The *Crane-Johnson* petition for writ of certiorari had been denied prior to decision by the Circuit Court of Appeals, Ninth Circuit, of the *Northwest Steel Rolling Mills* case. After a decision by the Ninth Circuit in the *Northwest Steel Rolling Mills* case, the petition in the *Crane-Johnson* case was granted by this Court.

Constitutional questions are presented in the *Northwest Steel Rolling Mills* case of importance to taxpayers and the Commissioner of Internal Revenue, and an advancement of this cause to be heard with the *Crane-Johnson* case would permit a decision of these questions, if necessary for the Court to decide the questions, contemporaneously with a disposition of the *Crane-Johnson* case. We quote from the petition for review in this cause to demonstrate the importance which the Commissioner attaches to such decision as a guide:

> "The desirability of having this case heard together with the *Crane-Johnson* case is emphasized by the fact that respondent's argument

that because of the different treatment accorded oral and written contracts restricting the payment of dividends, is a contention not made by and not available to the petitioner in the *Crane-Johnson* case. It would be helpful *in the administration of the Revenue Laws,* to have this question disposed of at the same time that the issues common to the two cases are decided." (*Petition,* p. 7). (Italics ours.)

In each of the cases (1063 and 584) the taxpayer corporation, while realizing income for the tax year in question, claims that because of state laws, distribution of a dividend during the tax year could not be made and therefore Section 26 (c) (1) applied because the corporate charter is a contract embodying state laws and a dividend could not be distributed "without violating a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with payment of dividends."

Thus the same issue of interpretation of the language of Section 26 (c) (1) arises although a different result might be obtained in the two cases by reason of the fact that the North Dakota statute involved in the *Crane-Johnson* case prohibited *directors* from distributing dividends, whereas the Washington statute applicable in the *Northwest Steel Rolling Mills* case prohibited the *corporation itself* from distributing dividends.

QUESTIONS PRESENTED

In further response to the petition for writ of certiorari, the following questions were presented to the Circuit Court of Appeals in the *Northwest Steel Rolling Mills* case:

1. Is a corporate charter from the State of Washington, which charter was granted prior to May 1, 1936, and embodies the general corporation law of the State of Washington, a written contract within the meaning of Section 26 of the Revenue Act of 1936, entitling petitioner to the credits allowed under that section?

2. Are Sections 14 and 26 arbitrary and discriminatory and an illegal interference by the federal government with state sovereignty if construed as disallowing a credit although petitioner's charter prohibits payment of dividends?

3. Are Sections 14 and 26 of the Revenue Act of 1936 arbitrary and discriminatory in that they deny credit to petitioner because of the provision of an *oral* contract with a credit or bank prohibiting the payment of dividends whereas they allow credit where similar provisions are contained in a *written* contract?

STATEMENT

Respondent was incorporated under the laws of the State of Washington in the year 1926 (R. 14). Respondent had an operating deficit as of December 31, 1935, of $76,983.26, and its net income for the year 1936 did not equal the amount of such deficit (R. 14).

From 1926 to 1936, respondent had been indebted to the Seattle-First National Bank. The bank in 1934 required payments of $1,000 per month in reduction of the principal of the indebtedness of approximately $115,000, and exacted the condition that if there was a failure by respondent to make these payments, the bank would apply for the appointment of a receiver. This condition was oral. In July, 1936, respondent paid the balance of $85,000 due the bank (R. 14, 15).

Respondent had never been in a position to pay dividends (R. 50).

Respondent claimed, and the Commissioner disallowed, a credit under Section 26, Revenue Act of 1936, for contracts restricting dividend payments, and the Commissioner determined that there was a deficiency of $13,628.22 (R. 6, 12). This action of the Commissioner was sustained by the Board (R. 18, 19), but reversed by the Circuit Court of Appeals for the Ninth Circuit (R. 82).

The Uniform Business Corporation Act, Laws of 1933, p. 785, Section 24, of the State of Washington; Remington Revised Statutes 3803-24 (2, 3, 4, and 5) provides that:

> "No *corporation* shall pay dividends"

unless the conditions therein prescribed are met.

The statute of North Dakota construed in the *Crane-Johnson Co. v. Commr. of Internal Revenue* case, Section 4543 of the North Dakota Compiled Laws of 1913, provides that:

> "The *directors* of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must *they* divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock, nor must *they* create debts beyond the subscribed capital stock. * * * " (Italics ours.)

In the foregoing respect the statutes of the state, constituting a part of the charters of the corporations, are different in that the Washington statute prohibits the *corporation* from paying dividends, whereas the North Dakota statute prohibits the *directors* of the corporation from paying dividends.

CONCLUSION

It is respectfully submitted that the motion for advancement of this cause on the calendar so that oral argument in this cause will be heard contemporaneously with oral argument in *Crane-Johnson v. Commissioner of Internal Revenue* should be granted.

Respectfully submitted,

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